

May 2019

OECA REDELEGATION OF AUTHORITY
SOLID WASTE DISPOSAL ACT

**8-29. Settlement or Concurrence in Settlement of Civil Judicial Enforcement Actions
(Subtitle I) (1200 TN 350 8-29)**

1. AUTHORITY.

- a. To exercise the Agency's concurrence in the settlement of civil judicial enforcement actions under Subtitle I of the Solid Waste Disposal Act; and
- b. to request the Attorney General to amend a consent decree issued pursuant to a civil judicial enforcement action and represent the agency.

2. TO WHOM REDELEGATED.

- a. The director of the Office of Civil Enforcement;
- b. The director of the Office of Site Remediation and Enforcement;
- c. The regional counsels.

3. LIMITATIONS.

- a. Except for headquarters-initiated cases, the director of OCE or the director of OSRE must obtain the concurrence of the appropriate regional administrator before exercising this authority.
- b. The director of OCE or the director of OSRE may not exercise these authorities for OCE settlements of \$1,000,000 or higher, except for bankruptcy settlements that do not raise issues of national significance.
- c. Regarding OCE cases or actions:
 - i. Except as provided in 3.c.iv below, regional counsels may not exercise these authorities either:
 - (1) For headquarters-initiated OCE cases,
 - (2) For multiregional bankruptcy or multiregional insurance receivership settlements, or
 - (3) For OCE enforcement actions which involve a bottom line penalty of \$1,000,000 or higher, except for bankruptcy settlements.
 - ii. Regional counsels must consult with the assistant administrator for the Office of Enforcement and Compliance Assurance prior to exercising this redelegated authority under the following circumstances:
 - (1) a proposed settlement would not comport with applicable penalty policies or recover the full amount of economic benefit of noncompliance from a violator not in bankruptcy; or
 - (2) the case raises issues of national significance or otherwise rises to a level of national attention.

- iii. Regional counsels are responsible in the first instance for identifying such cases and/or issues as they arise, and are expected to inform the director of OCE as soon as they are identified. Particular issues of national interest or concern may also be identified by division directors in OCE. Regional counsels should use discretion in identifying other issues which are nationally significant, yet do not otherwise fall within the guidelines or examples contained therein. Following appropriate consultation between the regional counsel and the director of OCE, or the appropriate OCE division director, regarding the above-referenced issues, OECA may, at the division director level, determine that concurrence of the AA for OECA is appropriate for the matter at hand, in which case concurrence will be required.
 - iv. The limitation of a bottom line penalty of less than \$1,000,000 in 3.c.i does not apply in actions for which the director of OCE determines that, in light of the issues presented, the concurrence of the AA for OECA is not necessary. \
- d. Regarding OSRE cases or actions, regional counsels may not exercise these authorities for headquarters-initiated OSRE cases, or for multiregional bankruptcy or multiregional insurance receivership settlements. Regarding regionally-initiated UST cases within OSRE's jurisdiction, regional counsels should exercise these authorities consistent with the most recent version of the OECA/OSRE CERCLA and RCRA/CWA/UST Roles Chart ("Roles Chart") or successor documents, as appropriate.

4. REDELEGATION AUTHORITY.

- a. The authority to settle OCE cases under \$500,000 that (i) recapture the economic benefit of noncompliance, except in bankruptcy settlements, and (ii) do not involve issues of national significance may be redelegated to the division director level in OCE.
- b. The authority to settle OSRE cases may be redelegated to the OSRE division director level.
- c. Regional counsels may not redelegate these authorities further.
- d. An official who redelegates an authority retains the right to exercise or withdraw the authority. Redelegated authority may be exercised by any official in the chain of command down to the official to whom it has been specifically redelegated.

5. ADDITIONAL REFERENCES.

- a. Memorandum of Understanding between the agency and the Department of Justice, June 1977; Section 9006 of the SWDA.
- b. For more information about nationally significant issues and the coordination process generally, see "Revised Consolidated Procedures for Regional and Headquarters Coordination on Regulatory Enforcement Cases Involving Nationally Significant Issues (NSIs)," Susan Shinkman (Feb. 1, 2017) (or most recent version of the NSI memorandum); "Efforts to Improve the Efficiency of Regulatory Enforcement Cases," Cynthia Giles (March 5, 2013); "OCE Efforts to Improve the Efficiency of Regulatory Enforcement Cases," Susan Shinkman (March 5, 2013); "OECA/Regional Procedures

May 2019

for Civil Judicial and Administrative Enforcement Case Redelegation,” Robert Van Heuvelen (Nov. 9, 1994); “Redelegation of Authority and Guidance on Headquarters Involvement in Regulatory Enforcement Cases,” Steven A. Herman (July 11, 1994); “Redelegation of the Assistant Administrator for OECA’s Concurrence and Authority in Settlement of Certain Civil Judicial and Administrative Enforcement Actions,” Steven A. Herman (July 8, 1994) (but this redelegation supersedes any actual redelegation of authority discussed in those memoranda).

6. **SUPERSESSION.** This redelegation supersedes any prior OECA redelegation of Delegation 8-29.

Date: _____

5/10/19

A handwritten signature in blue ink, appearing to read "Paul Bodine", written over a horizontal line.

Assistant Administrator for the Office of
Enforcement and Compliance Assurance